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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,081	08/20/2001	Donald L. Schmidt		5461

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EXAMINER

VARNER, STEVE M

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/932,081

Applicant(s)

SCHMIDT, DONALD L.

Examiner

Steve M Varner

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, the posts and beams both appear to be parallel to the first insulating panel and the second insulating panel not "parallel and perpendicular" as claim 3 states. This makes claim 3 indefinite.

Claim 6 recites the limitation "corner" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1, 2, 4, 10, are rejected under 35 U.S.C. 102(e) as being anticipated by Cormier.

Please see attached Figure 4.

Regarding claims 1, Cormier shows first (A) and second (B) insulating panels formed from expanded foam (Col. 2, Line 25-35). (Fig. 4) Cormier teaches tie brackets (14) spanning the first (A) and second (B) insulating panels which form a void such that a plurality of spaced apart posts (formed in C), a plurality of spaced apart beams (formed in D), and a plurality of webs (formed in E) are formed when the void is filled with poured concrete and the concrete cures. Cormier teaches a first interlocking member (F) and a second interlocking member (G). (Fig. 4)

Regarding claim 2, Cormier shows the posts and beams are parallelepipeds joined at their intersections. (Fig. 4)

Regarding claim 4, Cormier reveals the first interlocking member (F) is male; the second interlocking member (G) is female. They are vertically aligned. (Fig. 4)

Regarding claim 10, Cormier shows the forms are straight. (Fig. 4)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-9, 13, 14, are rejected under 35 U.S.C. 103(a) as being unpatentable over Cormier.

Regarding claim 5, Cormier shows the tie bracket (14) adjacent to the proximal end of the first insulating panel (A) and vertically longitudinally oriented. Cormier

teaches a vertical centerline spaced apart from said proximal end of the first insulating panel (A). Cormier does not teach this spacing. It would have been an obvious design choice to make the spacing a distance interval which is greater than two inches and less than one foot to provide adequate cover for the ties.

Regarding claim 6, Cormier shows the basic claimed structure. Cormier does not teach the vertical center line spaced apart from the proximal end of the first insulating panel as a whole number multiple of measurements of one half foot. It would have been an obvious design choice to space the vertical center lines apart from the proximal end of the first insulating panel at a whole number multiple of measurements of one half foot to provide adequate cover to the ties.

Regarding claim 7, Cormier reveals the basic claimed structure. Cormier reveals one tie bracket (14) including a plurality of tie brackets each having a center line spaced apart from the vertical center line of every adjacent tie bracket. (Fig. 4) Cormier does not state this spacing to be a whole number multiple of measurements of one foot. It would have been an obvious design choice to make this spacing a whole number multiple of measurements of one foot to provide periodic connection between the forms.

Regarding claim 8, Cormier reveals the basic claimed structure. Cormier shows the centers of the interlocking members spaced apart. (Fig. 4) Cormier does not show this distance as a foot. It would have been an obvious design choice to make this distance a foot.

Regarding claim 9, Cormier shows the basic claimed structure. Cormier does not show each interlocking member greater than one inch in length. It would have been an

obvious design choice to make the interlocking member greater than one inch in length to provide adequate connection between the forms.

Regarding claim 13, Cormier shows first (A) and second (B) insulating panels formed from expanded foam (Col. 2, Line 25-35). (Fig. 4) Cormier teaches tie brackets (14) spanning the first (A) and second (B) insulating panels which form a void such that a plurality of spaced apart posts (formed in C), a plurality of spaced apart beams (formed in D), and a plurality of webs (formed in E) are formed when the void is filled with poured concrete and the concrete cures. Cormier teaches the tie bracket is vertically longitudinally oriented with a vertical centerline. (Fig. 4) Cormier does not teach the proximal bracket spaced apart from the proximal end by a distance of six inches and then from each other at a distance interval of one foot. It would have been an obvious design choice to space the proximal end tie bracket by a distance of six inches from the proximal end to and thereafter at a distance of one foot to provide adequate cover for the proximal tie and adequate connection between the forms thereafter. Cormier teaches a first interlocking member (F) and a second interlocking member (G). (Fig. 4) Cormier does not teach the interlocking member centers spaced apart by a distance of one foot and each interlocking member is two inches long. It would have been an obvious design choice to have the interlocking member centers spaced apart by a distance of one foot and each interlocking member two inches long to provide adequate connection between the forms. Cormier shows the beams and posts forming parallelepipids. (Fig. 4)

Regarding claim 14, Cormier shows the forms straight. (Fig. 4)

Claims 11, 12, 15, 16, are rejected under 35 U.S.C. 103(a) as being unpatentable over Cormier in view of Browning, Jr.

Regarding claim 11, 12, 15, 16, Cormier shows the basic claimed structure. Cormier does not show a first leg and a second leg disposed at an oblique angle to make a corner insulating concrete form. Browning Jr. shows a first leg and a second leg disposed at a 90-degree angle to make a corner insulating concrete form. (Fig. 5) The angle can be other than 90 degrees (Col. 9, Line 15). Browning, Jr. does not show the length of the first leg and the second leg having a sum total length of four feet. It would have been an obvious design choice for the sum total length to be four feet. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use an oblique corner insulating concrete form as in Browning, Jr. in the structure of Cormier to provide forms for corners.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Martin et al. shows a concrete forming system with brace ties. Vaughan et al. teaches concrete forming systems with brace ties.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone numbers

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for the organization where this application or proceeding is assigned are 703 305-7687
for regular communications.

Any inquiry of a general nature or relating to the status of this application or
proceeding should be directed to the receptionist whose telephone number is 703 308-
1113.

SV
October 18, 2002



Carl D. Friedman
Supervisory Patent Examiner
Group 3600